

OGC 74-2415

24 December 1974

MEMORANDUM FOR: Deputy Director for Operations  
Deputy Director for Intelligence ✓  
Deputy Director for Administration  
Deputy Director for Science & Technology  
Deputy to the Director/NIO  
Deputy to the DCI/IC  
Inspector General  
Legislative Counsel  
Comptroller

SUBJECT : Freedom of Information Requirement  
for Publishing Indices

1. The Freedom of Information Act requires that agencies maintain indices of certain types of documents. Documents to be indexed are all documents issued, adopted or promulgated after July 4, 1967 which fall within any of the following three categories:

- (a) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (b) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
- (c) administrative staff manuals and instructions to staff that affect a member of the public.

But the Act also provides that the above provision (and others) does not apply to matters that are:

- (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.
- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (9) geological and geophysical information and data, including maps, concerning wells.

2. Under the recent amendments to the Act, to become effective in February, agencies are also required to "promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable." Addressees are requested to specify documents for which they are responsible which, under the provisions of the Act quoted above, must be indexed. From this information we would assist in compiling Agency indices and in the decision to publish or not to publish, also referred to above. We will be glad to assist in your consideration as to whether any particular document or categories of documents must be indexed.

3. As mentioned, the requirement to maintain indices is not new. Only the requirement that the indices be published is new. The question as to what documents, if any, must be indexed has been considered, at least informally, in the past but I am not aware that we have ever concluded that no documents require indexing.

4. A related matter, for consideration, is that "in accordance with published rules" all indexed documents must be made available "for public inspection and copying," unless they are published and offered for sale.

5. As mentioned, indices are to be published "quarterly or more frequently." Since the amendments become effective in mid-February it would seem desirable that our first publication apply with respect to the first quarter of 1975, that is, our index would be issued as of April 1, 1975 and would index all documents issued between that date and July 4, 1967. Please let us have your response at an early date, if possible, by February 1.

STATINTL



Associate General Counsel

OFFICE OF THE DDV

DATE: 26 December 1974

TO: EWP (info PW/M/L/J)

FROM: Ben

SUBJECT: Freedom of Information Requirement for  
Publishing Indices

REMARKS:

We are being asked to specify all documents for which we are responsible that must be indexed under the provisions of the Freedom of Information Act.

I assume Eisenbeiss should have action on this.

STATINTL

I will send a copy to [REDACTED]

OK  
JWR

Action copy sent to  
Eisenbeiss, info copy to  
[REDACTED], 12/26/74 - Ben

STATINTL

ACTION